



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
230 SOUTH DEARBORN ST.  
CHICAGO, ILLINOIS 60604

SEP 11 1990

REPLY TO ATTENTION OF: 5CS-TUB-3

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Dennis Reis  
Sidley & Austin  
One First National Plaza  
Suite 5400  
Chicago, IL 60603

Dear Mr. Reis:

On September 4, 1990, the U.S. EPA Office of Regional Counsel received an offer from the NL Industries/Taracorp Steering Committee to perform the remedial design and remedial action at the NL Industries/Taracorp Superfund Site (NL Site) in Granite City, Illinois. The offer is dated August 31, 1990. The purpose of this letter is to inform the PRP committee that the offer received by U.S. EPA does not constitute a "good faith" offer as that term is defined in the special notice letter U.S. EPA sent to members of the committee.

A good faith offer must not be significantly different from U.S. EPA's Record of Decision (ROD). The ROD specifies that the cleanup of the NL Site must include a soil-lead cleanup of no more than 500 parts per million (ppm) lead in soil. The primary reason the committee's offer does not form the basis for formal negotiations is the offer's failure to accept the 500 ppm cleanup standard.

The committee's offer contains an extensive discussion of the appropriate cleanup standards at the NL Site. The discussion indicates a number of misconceptions regarding the cleanup standard and how it was chosen. The remainder of this letter will briefly list some of these differences.

1. The committee's proposal to reconsider the 500 ppm cleanup standard ignores the primary site specific reasons U.S. EPA selected the cleanup standard. To reiterate our previous comments on this matter, the soil at the NL Site is documented as containing elevated levels of lead. The lead is the result of smelter emissions. Smelter operations in Granite City resulted in the emission of small, highly bioavailable lead particles. Low exposures to this form of lead have been shown to have significant health effects on children. The industrial nature of Granite City may make children especially sensitive to the toxic effects of these particles due to the synergistic interaction of lead with

other toxic substances. The zone of contamination at the NL Site is a residential area, provides unrestricted access to the many children who visit and live in the contaminated area, and leaves the population vulnerable to a number of exposure paths. Appendix B of the ROD contains a more detailed discussion of these and other reasons for U.S. EPA's selection of the cleanup standard.

2. The Committee has misunderstood EPA's use of the Integrated Uptake/Biokinetic Model (the "biokinetic model") in the Record of Decision for the NL Site. Comments in the public response of NL Industries suggested that the EPA Integrated Uptake/Biokinetic Model has been "demonstrated to be a reliable analytical method to determine the relationship between environmental lead concentrations and blood lead concentrations for EPA lead rulemaking." EPA has stated that the Biokinetic Model has not yet been approved for use in setting cleanup levels at Superfund sites. EPA did not rely on use of the biokinetic model in its selection of cleanup standards at the NL Site. However, EPA did consider and discussed the biokinetic model in the NL ROD and determined that even a liberal interpretation of the model supported the selected cleanup standard. The choices of default parameters used in the model were those suggested by the commenters. U.S. EPA did not necessarily agree with the validity of those assumptions. An example is the use of the 15 ug/dl level for lead in blood in U.S. EPA's application of the model. This number was used at the commenters' request, but is actually 50% higher than acceptable. A more commonly accepted -- and better -- standard is 10 ug/dl of lead in the blood of children. It is noteworthy that the application of the commenters' suggested parameters in the model demonstrated that the selected cleanup level of 500 ppm lead in soil is at the high end of any acceptable range.

3. It is evident from the committee's comments on the Integrated Uptake/Biokinetic Model that the committee is aware of the extensive review U.S. EPA has made of this model. We appreciate the committee's critique of the model and suggest that general comments on the use of the model be addressed to Chris DeRosa at U.S. EPA's Office of Health and Environmental Assessment in Cincinnati. Region V has not been involved in the development of this model.

4. The basis of the committee's present criticism of the biokinetic model was not presented during the public comment period. Nevertheless, the information presented by the committee does not support the need to alter the response action. The environmental consultants hired by the committee appear to rely on a lead study conducted in Midvale, Utah, to support their criticism of U.S. EPA's use of the biokinetic model in Granite City. The Midvale study was not available at the time of the ROD. Nevertheless, the study contains flaws which prohibit its use by Region V. One example of the flaws in the Midvale study is the

data set. The contractors for the Midvale study chose to edit the data in such a manner so as to discard data of children with the highest levels of lead in their blood. Such an approach is, at best, questionable.

For further response to the committee's suggestion that a blood-lead study should be utilized to determine the remedy at the NL Site, the committee should refer to section 2.2.2 "Biological Monitoring as a Measure of Exposure and Effects" in Toxicological Profile for LEAD, U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, ATSDR/TP-88/17, June, 1990. In examining the measurement of lead in blood as a method of exposure, ATSDR notes that

"The half-life of lead in human blood is 28 to 36 days; thus, levels of lead in blood reflect relatively recent exposure compared with levels of lead in teeth [or bone], which continue to accumulate lead over time. Because lead cycles between the blood and bone, a single blood lead determination cannot distinguish between exposure to a given level for an extended period of time from a previous exposure to a high level that would result in the same blood level due to recycling from bone."

The ATSDR report further notes that the development of a technique using X-ray fluorescence to determine lead in bone may prove to be a valuable indicator of the body burden of lead. It is U.S. EPA's position, however, that the NL Site presents an imminent and substantial endangerment which requires prompt action.

5. Another inherent flaw in the committee's proposal is a fundamental misunderstanding of the biokinetic model, its use and its purposes. The model is designed to predict blood-lead levels which occur in individuals and utilizes a number of parameters, including soil-lead levels, in its predictions. The model, however, is not designed to do a reverse regression; it can not be used to determine appropriate levels of lead in soil based on blood-levels found in children at a particular time. This, however, is exactly what is proposed by your committee. In fact, the backward step-wise multiple regression programs that the committee has proposed to use do not exist in an acceptable form, if at all. U.S. EPA is engaged in a number of ongoing research programs which may generate the data required to develop the relationships between environmental lead sources and blood lead levels. Such data is incomplete at present, but suggests that these relationships may not be linear. For these reasons, the use of such a multiple regression program is not an EPA approved methodology.

In summary, the fundamental difference between the committee's offer and a good faith offer is the acceptance of the cleanup standards expressed in the ROD. The committee appears to propose that the ultimate cleanup of the site be dictated by the blood-lead levels of children in the area. U.S. EPA strongly believes that a blood study simply can not drive the remedy at a lead site. Blood lead levels merely provide a snap shot of an individual's exposure to lead. The levels are transient, will change from time to time, and are not a reliable means of determining an individual's actual exposure to lead.

U.S. EPA requests that all further contact in matters related to the NL Site be directed to Steven Siegel of our Office of Regional Counsel. Please contact Mr. Siegel if you or your committee believes there is a basis for any further discussions based upon a good faith offer.

Sincerely,



Norman R. Niedergang  
Acting Associate Division Director  
Office of Superfund



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
230 SOUTH DEARBORN ST.  
CHICAGO, ILLINOIS 60604

SEP 14 1990

REPLY TO ATTENTION OF: 5CS-TUB-3

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ms. Janet Smith  
NL Industries, Inc.  
Office of General Counsel  
445 Park Avenue  
New York, New York 10022

Dear Ms. Smith:

On August 31, 1990, U.S. EPA received an offer from NL Industries, Inc. to commence negotiations for the remedial design and remedial action of the NL Industries/Taracorp Superfund Site in Granite City, Illinois (the "NL Site"). The purpose of this letter is to inform you that the offer presented by NL Industries is not a "good faith" offer as that term is defined in the special notice letter of June 25, 1990, which U.S. EPA sent to NL.

A good faith offer must not be significantly different from U.S. EPA's Record of Decision (ROD). The ROD specifies that the cleanup of the NL Site must include a soil-lead cleanup of no more than 500 parts per million (ppm) lead in soil. The primary reason NL's offer does not form the basis for formal negotiations is the offer's failure to accept the 500 ppm cleanup standard.

■ Please direct all future contacts between NL and the United States related to this matter to Steven Siegel of our Office of Regional Counsel. Please be advised, however, that additional meetings with NL for the purpose of achieving a negotiated settlement of this matter are not warranted so long as NL refuses to accept the cleanup standards expressed in the Record of Decision.

Sincerely,

Norman R. Niedergang  
Acting Associate Division Director  
Office of Superfund



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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230 SOUTH DEARBORN ST.  
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Mr. Dennis Reis  
Sidley & Austin  
One First National Plaza  
Suite 5400  
Chicago, IL 60603

Dear Mr. Reis:

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1. The committee's proposal to reconsider the 500 ppm cleanup standard ignores the primary site specific reasons U.S. EPA selected the cleanup standard. To reiterate our previous comments on this matter, the soil at the NL Site is documented as containing elevated levels of lead. The lead is the result of smelter emissions. Smelter operations in Granite City resulted in the emission of small, highly bioavailable lead particles. Low exposures to this form of lead have been shown to have significant health effects on children. The industrial nature of Granite City may make children especially sensitive to the toxic effects of these particles due to the synergistic interaction of lead with

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"The half-life of lead in human blood is 28 to 36 days; thus, levels of lead in blood reflect relatively recent exposure compared with levels of lead in teeth [or bone], which continue to accumulate lead over time. Because lead cycles between the blood and bone, a single blood lead determination cannot distinguish between exposure to a given level for an extended period of time from a previous exposure to a high level that would result in the same blood level due to recycling from bone."

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U.S. EPA requests that all further contact in matters related to the NL Site be directed to Steven Siegel of our Office of Regional Counsel. Please contact Mr. Siegel if you or your committee believes there is a basis for any further discussions based upon a good faith offer.

Sincerely,



Norman R. Niedergang  
Acting Associate Division Director  
Office of Superfund



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
230 SOUTH DEARBORN ST.  
CHICAGO, ILLINOIS 60604

SEP 25 1990

REPLY TO ATTENTION OF: 5CS-TUB-3

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. George M. von Stamwitz, Esq.  
Armstrong, Teasdale, Schlafly, Davis & Dicus  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102-2740

Dear Mr. von Stamwitz:

U.S. EPA is in receipt of an offer dated August 31, 1990, from St. Louis Lead Recyclers ("SLLR") to commence negotiations for the remedial design and remedial action of the NL Industries/Taracorp Superfund Site in Granite City, Illinois (the "NL Site"). The purpose of this letter is to inform you that the offer presented by SLLR is not a "good faith" offer as that term is defined in the special notice letter of June 25, 1990, which U.S. EPA sent to SLLR.

A good faith offer must not be significantly different from U.S. EPA's Record of Decision (ROD). The ROD provides for the entire cleanup of the NL Site. SLLR's offer addresses only a small portion of the selected remedy for the NL site and appears to base its offer on the assertion that SLLR's involvement at the NL Site is clearly divisible from other potentially responsible parties. U.S. EPA disagrees with this assertion. We also note that SLLR's offer appears to be an attempt to reduce SLLR's existing statutory obligations.

Please direct all future contacts between SLLR and the United States related to this matter to Steven Siegel at our Office of Regional Counsel.

Sincerely,

A handwritten signature in cursive script, reading "Norman R. Niedergang".

Norman R. Niedergang  
Acting Associate Division Director  
Office of Superfund



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
230 SOUTH DEARBORN ST.  
CHICAGO, ILLINOIS 60604

DEC 24 1990

REPLY TO ATTENTION OF: 5CS-TUB-3

Mr. Daniel J. Bicknell  
Environmental Activities Staff  
General Motors Corporation  
General Motors Technical Center  
30400 Mound Road  
Warren, Michigan 48090-9015

Dear Mr. Bicknell:

This letter is in response to our December 7, 1990 meeting and your December 13, 1990 correspondence proposing that generators at the NL Industries/Taracorp Site perform 35% of the cleanup of the Site. As you are aware, U.S. EPA issued special notices to the generators represented by your committee on June 25, 1990, pursuant to Section 122 of CERCLA. The negotiation period closed after 60 days when no good faith offer was received to undertake the remedy. As an initial matter, then, your proposal, was made only after U.S. EPA issued a unilateral administrative order pursuant to section 106 of CERCLA. Such late proposals are not favored, and U.S. EPA is under no obligation to consider a proposal in these circumstances.

Having said this, I believe that some elements of your proposal are worthy of serious consideration by U.S. EPA. I would be able to recommend pursuing settlement discussions for a limited time provided that I receive agreement from your committee on certain key points as follows:

1. The generators who sign the proposed settlement will be responsible for implementing 35% of the remedy. This share will not be renegotiated based any role NL Industries may have played as a generator. In addition, the generators will agree to perform remedial design.

2. The December 13, 1990 letter is silent on the subject of reopener clauses. Any settlement acceptable to EPA must include standard reopeners in the event that there is remedy failure and, additionally, if the U.S. Government determines that recovery of 65% of the remedy costs from the owner/operator (NL Industries) is not feasible. This later point will require further discussions, obviously.

3. Past costs will be paid by the generators as part of the settlement (past costs are estimated not to exceed \$300,000).

4. A negotiated settlement must be consistent with the remedy selected in the Record of Decision. A remedy based on tilling is a dilution remedy which is inconsistent with the record of decision and is not an appropriate subject for negotiations at this time.

Your letter of December 13 raises several additional points which are addressed as follows:

1. The Committee requests that the settlement contain provisions making it clear that the generators have assented to the percentages for settlement purposes only. I do not object to such provisions.

2. The generators wish to retain the right to sue NL for contribution. A negotiated consent decree will not preclude the generators from any rights to sue NL they otherwise may have. EPA, of course, would not be foreclosed from reaching a negotiated agreement with NL.

3. Your letter states that EPA has indicated it is willing to exclude specific units of work from the generators' assigned share. While this is accurate, your letter indicates that home interior inspections was mentioned as an area which may be excluded. EPA has not indicated that home interior inspections is an appropriate category to exclude from the generators share of work.

Several other issues were not mentioned in the December 13 correspondence will also warrant further discussion. Mark Hester indicated in a telephone conversation a willingness to allow the Remedial Design to be included in the generators' share of work in addition to the 35% share of the remedial action, if U.S. EPA agreed not to include a cost for the Other Contingency Measures when calculating the generators 35%. Questions for further discussion also include 1) what adjustments will be made on the 35% share after the RD cost estimates are approved and 2) the method and sharing of contributions by generators who did not receive the Order.

I wish to emphasize that this letter should not be regarded as an "offer" by U.S. EPA. Any settlement will require review by Regional management and Headquarters. As mentioned above, I will recommend further discussions on these points if I receive the Committee's conceptual agreement on each of the issues outlined above by January 4, 1990. Please call me at (312) 353-1129 to discuss any of these issues at your earliest convenience.

Sincerely,



Steven Siegel  
Assistant Regional Counsel

cc: Brad Bradley  
Allen Held  
Mark Hester  
Stuart Williams